

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DA'SHAWN RUSSEL, #13-B-0551,

Plaintiff,

-vs-

YOUNG, et al.

Defendants.

ANSWER
JURY TRIAL DEMANDED

18-CV-6209

Defendants Young, Armstrong, Wurster, Dewald, Pundt, Greis, Thompson and Annucci, by their attorney, Barbara D. Underwood, Attorney General of the State of New York, J. Richard Benitez, Assistant Attorney General, of counsel, in answer¹ to the complaint (dkt #1), respond that they:

1. Demand a trial by jury.
2. Deny the allegations of the complaint which allege in any manner that the action(s) or inaction(s) of the defendant resulted in a deprivation of the plaintiff's constitutional rights.
3. Deny the commission or awareness of, or responsibility for, any acts of omission or commission relative to plaintiff's allegations constituting a violation of any rule, regulation, directive, policy, or statute of the State of New York, or the United States, or the Constitution of either, which would confer jurisdiction upon this Court pursuant to 28 USC §1343.
4. Deny plaintiff has alleged facts, actions, occurrences, or omissions

¹ Subject to NYS POL § 17.

sufficient to establish a claim for equitable or monetary relief, or a cause of action against the defendant pursuant to 42 U.S.C. §1983.

5. Deny each and every other allegation of the complaint not herein admitted, denied, or otherwise controverted.

6. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 of the complaint: this shall be deemed a denial.

FIRST DEFENSE

The complaint fails, in whole or in part, to state a claim upon which relief can be granted.

SECOND DEFENSE

The defendants, at all times relevant hereto, acted without malice and under the reasonable belief that their actions were proper and in accordance with existing law. Accordingly, they are entitled to qualified immunity.

THIRD DEFENSE

The alleged conduct was, in whole or in part, properly within the discretionary authority committed to the defendant to perform their official functions, and the relief prayed for would constitute an improper intrusion by the federal judiciary into said discretionary authority.

FOURTH DEFENSE

Upon information and belief, that this action is barred, in whole or in part, by the Eleventh Amendment to the United States Constitution.

FIFTH DEFENSE

Upon information and belief, plaintiff failed to file timely grievance(s) complaining of one or more of the matters alleged in the complaint and/or he failed to exhaust his administrative remedies through the DOCS grievance process. As a result, he has failed to meet a necessary precondition to suit under the PLRA and his action against some or all of the defendants must be dismissed.

SIXTH DEFENSE

Upon information and belief, plaintiff failed to mitigate his damages.

SEVENTH DEFENSE

Upon information and belief, the Court lacks subject matter jurisdiction over the claims.

EIGHTH DEFENSE

The doctrine of respondeat superior does not apply in actions brought pursuant to 42 U.S.C. §1983, and bars relief to the plaintiff.

WHEREFORE, defendants respectfully requests that judgment be entered dismissing the complaint in all respects and that they be awarded reasonable costs and attorneys' fees and for such other and further relief as may be just, proper, and equitable.

Dated: Rochester, NY
September 25, 2018

BARBARA D. UNDERWOOD
Attorney General of the State of New York
*Attorney for Defendants Young, Armstrong,
Wurster, Dewald, Pundt, Greis, Thompson and
Annucci*

By:

/s/ J. Richard Benitez
J. RICHARD BENITEZ
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Rochester, New York 14614
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CERTIFICATE OF SERVICE

I certify that on September 25, 2018, I electronically filed the foregoing Answer of Defendants with the Clerk of the District Court using CM/ECF system;

And, I hereby certify that I have mailed, by the United States Postal Service, the document to the following non-CM/ECF participant(s):

1. Da' Shawn Russell
13B0551
Chapel House Shelter
36 Franklin Street
Auburn, NY 13021

BARBARA D. UNDERWOOD
Attorney General of the State of New York
*Attorney for Defendants Young, Armstrong,
Wurster, Dewald, Pundt, Greis, Thompson and
Annucci*

By:

/s/J. Richard Benitez
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